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Opinion No. 05-147

Additional Compensation for Court Clerk

QUESTION

2005 Tenn. Pub Acts Ch. 195 authorizes a county commission to approve a ten percent salary supplement to a court clerk who acts as the clerk for more than one court. Tenn. Code Ann. § 8-24-102(g) provides that the sheriff and head of the county highway department must receive compensation “at least ten percent (10%) higher than the salary paid to the general officers of the county.” Does the 2005 act authorize a county commission to approve a salary supplement for a clerk who meets the statutory requirement without approving a corresponding increase in the salary of the sheriff and head of the county highway department?

OPINION

Yes, under 2005 Tenn. Pub. Acts Ch. 195, a county commission may approve a salary supplement to a clerk who acts as the clerk for more than one court, without approving a corresponding increase in the salary of the sheriff and head of the county highway department.

ANALYSIS

This opinion addresses implementation of 2005 Tenn. Pub. Acts Ch. 195. That provision amends Tenn. Code Ann. § 8-24-102 regarding county officials’ salaries. Subsection (b) of this statute sets a schedule of minimum compensation levels for general officers, broken down by population brackets. Under Tenn. Code Ann. § 8-24-102(a), “general officers” includes assessors of property, county clerks, clerks and masters of chancery courts, clerks of probate courts, clerks of circuit courts, clerks of general sessions courts, clerks of criminal courts, juvenile court clerks, county trustees and registers of deeds. Subsection (g) provides:

The compensation for the sheriff and chief administrative officer of the county highway department shall be at least ten percent (10%) higher than the salary paid to the general officers of the county. The county legislative body of each county may increase or decrease the compensation of the chief administrative officer of the county highway department so long as the compensation is maintained at or above the minimum level established herein.

Subsection (h) provides:

All general officers of the county shall be paid the same salary with the exception of any education incentive payments made to certified public administrators under § 5-1-310 and any payments made to the assessor of property under § 67-1-508.

Under subsection (i), the county legislative body of each county may increase or decrease compensation of county officials so long as the compensation is maintained at or above the statutory minimum levels.

Before it was amended by 2005 Tenn. Pub. Acts Ch. 195, subsection (j) of this statute provided:

Any action by a county legislative body to exceed the minimum level of compensation for county officials established pursuant to this section must be included in a resolution scheduled for consideration on the agenda of the meeting. All meetings of the county legislative body shall comply with the requirements of the open meetings act contained in title 8, chapter 44, part 1.

2005 Tenn. Pub. Acts Ch. 195 redesignated this provision as subdivision (j)(1) and added the following (j)(2):

Notwithstanding any other provision of this section or law to the contrary, a county legislative body may provide to a clerk of court who serves more than one court in the county additional compensation in the amount of ten percent (10%) of such clerk's base compensation. Such increase shall be for the purpose of compensating the clerk for the additional duties and time required to serve multiple courts and, in order for such increase to be valid, it must be adopted by resolution of the county legislative body.

The question is whether this provision would authorize a county commission to raise the salary of a clerk who meets the conditions it specifies without also raising the salary of the sheriff and chief administrative officer of the county highway department under subsection (g). The new subdivision (j)(2) states that it applies “[n]otwithstanding any other provision of this section or law *to the contrary*.” (Emphasis added). The word “notwithstanding” means without prevention or obstruction from or by and in spite of. *Op. Tenn. Att’y Gen. 96-062 (April 8, 1996)*. If the new subdivision is applied, the salary of all the general officers will no longer be equal. Clearly, therefore, the “notwithstanding” phrase was intended to include subsection (h) requiring that general officers all receive the same salary. It is less clear whether subsection (g) requiring the salary of the sheriff and head of the county highway department to be higher than the “salary” of general officers is also a law “to the contrary” of subdivision (j)(2). We think, however, that a court would read the

notwithstanding clause with the language of subsection (g) and conclude that the county commission may raise a qualifying clerk's salary without a corresponding increase in the compensation of the sheriff and head of the county highway department. Subsection (g) provides that that compensation must be "at least ten percent (10%) higher than *the* salary paid to the general officers of the county." (Emphasis added). We think the use of the definite article "the" in this context was intended to refer to the uniform salary paid to the county general officers under subsection (h), without regard to the supplement paid a clerk under subdivision (j)(2). For this reason, we think a court would conclude that, under 2005 Tenn. Pub. Acts Ch. 195, a county commission may approve a salary supplement to a clerk who acts as the clerk for more than one court, without approving a corresponding increase in the salary of the sheriff and head of the county highway department.

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